

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)	
HALLADOR POWER COMPANY, LLC FOR)	
CERTAIN DETERMINATIONS BY THE)	
COMMISSION WITH RESPECT TO ITS)	CAUSE NO. 45691
JURISDICTION OVER PETITIONER'S)	
ACTIVITIES AS A GENERATOR OF)	
ELECTRIC POWER)	

VERIFIED PETITION

Hallador Power Company, LLC ("Petitioner"), by counsel, respectfully requests that the Indiana Utility Regulatory Commission ("Commission") enter an order declining to exercise jurisdiction, pursuant to Ind. Code § 8-1-2.5-5, over Petitioner's purchase, ownership, and operation of an existing two-unit, coal-fired electric generating plant located in Sullivan County, Indiana ("Facility"), which is presently owned by Hoosier Energy Rural Electric Cooperative ("Hoosier"). In support of this Petition, Petitioner states that:

1. **Petitioner's Legal Status.** Petitioner is a limited liability company duly organized and existing under the laws of the State of Delaware. Petitioner's principal place of business is at 1183 East Canvasback Drive, Terre Haute, IN 47802. Petitioner's sole member is Hallador Energy Co. ("Hallador"), which is a C Corporation existing under the laws of the State of Colorado with its principal place of business at 1183 East Canvasback Drive, Terre Haute, IN 47802. Hallador's expertise includes oil and gas exploration, coal development and transportation delivery. Hallador reported having revenues of approximately \$245 million in 2020.

2. **The Facility.** Petitioner intends to purchase, own, and operate the Facility. The generating station, ash landfill, and associated rail facilities for the Facility are situated in Sullivan County and will also be owned and operated by Petitioner. The Facility, which is the subject of

this Cause, currently has a nameplate installed capacity of 1,070 megawatts (“MW”). Petitioner’s proposed activity will qualify it as a “public utility” under Ind. Code § 8-1-2-1 (a)(2) and as an “energy utility” under § 8-1-2.5-2. Alternative utility regulation is therefore available to Petitioner.

3. **Relief Requested.** Petitioner requests that the Commission, pursuant to Ind. Code. § 8-1-2.5-5, decline to exercise any jurisdiction to (a) require Petitioner to obtain a certificate of public convenience and necessity to purchase and expand the Facility under Ind. Code Ch. 8-1-8.5, the “Powerplant Construction Act” and (b) regulate, under Ind. Code. Ch. 8-1-2, the “Public Services Commission Act,” Petitioner’s purchase, ownership and operation of, and other activities in connection with the Facility.

4. **Facility to be Certified as an Exempt Wholesale Generator.** Petitioner intends to certify the Facility as an Exempt Wholesale Generator (“EWG”), as provided in 18 C.F.R. § 366.7 of the Federal Energy Regulatory Commission’s (“FERC”) regulations. Requests for any authorizations required to sell the electrical output from the Facility into the wholesale markets will be made to FERC.

5. **Service Only to Wholesale Power Markets.** The Facility will exclusively serve the wholesale power markets, and Petitioner does not intend to recover the costs of the Facility from Indiana ratepayers through rate base, rate of return, or comparable methods typically associated with retail public utility rates. Petitioner will have no franchises, service territory, or retail customers and will make no retail sales in Indiana or elsewhere. All sales by Petitioner of electric energy produced by the Facility will be sold into the wholesale markets and not at retail. Petitioner will not otherwise dedicate or hold itself out to serve directly the electric needs of the general public, but Petitioner’s ownership and operation of the Facility will provide significant public benefits. Petitioner will not be obligated to sell energy produced by the Facility to any

entity absent a contract or other agreement to do so. Similarly, no public utility or other entity will be obligated to purchase energy produced by the Facility other than by mutual agreement or pursuant to wholesale market tariffs and rules. Petitioner will not engage in the transmission of electric power, other than what is incidental to the ownership and operation of the Facility as an EWG.

6. **Powerplant Construction Act.** The Powerplant Construction Act was not intended to apply to the purchase of a facility such as the Facility, which will operate as a non-regulated power plant with no obligation or authorization to serve retail customers. The Indiana General Assembly enacted the Powerplant Construction Act to ensure that public utilities providing retail electric service in Indiana do not build unnecessarily “large, expensive power plants with lengthy construction periods . . . to meet expanded growth.” *In re the Petition of Indianapolis Power & Light Co.*, 1992 WL 12710787 (IURC Cause No. 39236, Sept. 2, 1992) (citing *In re Petition of Southern Indiana Gas and Elec. Co.*, (IURC Cause No. 38738, Oct. 25, 1989)). The Powerplant Construction Act was designed to protect the retail customers of Indiana’s regulated electric utilities from the costs associated with excessive generating capacity, while at the same time ensuring that the utilities serving those retail customers would be allowed to recover their prudent investments in new generating facilities. *See* Ind. Code § 8-1-8.5-6.5 (“a utility shall recover through rates the actual costs the utility has incurred in reliance on a certificate issued” by the Commission). No such protections of the ratepayers in Indiana are requested by Petitioner or are required here.

7. **Declination of Jurisdiction.** Given these facts, Petitioner respectfully requests that the Commission decline to exercise any jurisdiction over Petitioner’s purchase, ownership or operation of, or any other activity in connection with, the Facility under Ind. Code §8-1-2.5-5. The

tests set out in that statute for the Commission to determine whether the public interest will be served by the Commission's declining to exercise jurisdiction over Petitioner are clearly met here. *See* Ind. Code §8-1-2.5-5(b). Competitive forces in the wholesale power markets and FERC's regulatory oversight of Petitioner's operation and wholesale electric rates render the exercise of jurisdiction over such operation and rates by the Commission unnecessary, burdensome, and wasteful of the Commission's time and resources. Thus, the Commission's declining to exercise jurisdiction over Petitioner will be beneficial to the State of Indiana.

8. **Statutory Authority.** Petitioner believes that Ind. Code ch. 8-1-2 generally, and ch. 8-1-2.5 specifically, apply to this proceeding. Counsel for Petitioner in this Cause is Kyle Hupfer, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204, who is authorized on Petitioner's behalf to receive papers filed in this matter.

9. **Prior Commission Orders.** This Commission has also previously granted relief similar to the relief petitioner seeks in this Cause for other wholesale power plants. Denying the requested relief would inhibit Petitioner from competing with other similarly situated entities facing fewer regulatory burdens. Ind. Code § 8-1-2.5-5(b)(4). *See, e.g., In the Matter of the Petition by Indiana Michigan Power Co. and AEP Generating Co.* (Cause No. 45546, Dec. 8, 2021) (purchase of existing Unit 2 of Rockport Generating Station); *In the Matter of the Petition by Crawfordsville Energy, LLC* (Cause No. 44101, July 3, 2012) (existing coal-fired electric generating plant in Crawfordsville, Indiana); *Petition of PSEG Lawrenceburg Energy Co. LLC* (Cause No. 41757, Dec. 20, 2000) (construction of a power generating facility in Lawrenceburg, Indiana); *In the Matter of the Petition by Wildcat Wind Farm I, LLC* (Cause No. 44044, Sept. 14, 2011) (construction of a 200 MW wind-power generating facility in Madison and Tipton Counties, Indiana); *In the Matter of the Petition by Sugar Creek Energy, L.L.C.* (Cause No. 41753, Feb. 23,

2001) (construction of a 533 MW gas-fired, combined cycle electric generating facility in Sugar Creek Township, Indiana).

10. **Procedural Schedule**. Petitioner requests consideration of the requested relief on a schedule that will allow for an Order to be issued by the Commission on or before June 1, 2022. Petitioner will confer with the Indiana Office of Utility Consumer Counselor to establish a procedural schedule. Petitioner will file an agreed upon procedural schedule within thirty (30) days of filing the Petition.

WHEREFORE, Petitioner respectfully requests that the Commission promptly set this matter for hearing and thereafter enter an Order:

- a. Declaring that the Commission declines to exercise any jurisdiction in all respects over Petitioner's purchase, ownership and operation of, and other activities in connection with the Facility;
- b. Granting Petitioner an indeterminate permit to own and operate the Facility as an EWG; and
- c. Granting Petitioner other just and proper relief as required in this proceeding.

Respectfully submitted

/s/ Kyle Hupfer

Kyle Hupfer, Attorney No. 20939-53
Taft Stettinius & Hollister LLP
One Indiana Square
Suite 3500
Indianapolis, Indiana 46204

ATTORNEY FOR PETITIONER,
HALLADOR POWER COMPANY, LLC

VERIFICATION

I, hereby affirm, under the penalties of perjury, that the representations contained in the foregoing Verified Petition are true to the best of my knowledge and belief.

Hallador Power Company, LLC

By: Brent K. Bilslund

Name: Brent K. Bilslund

Title: President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Verified Petition was electronically delivered this 7th day of March, 2022.

Office of Utility Consumer Counselor
115 West Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
infomgt@oucc.in.gov

/s/ Kyle Hupfer

Attorney for Petitioner
Hallador Power Company, LLC

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TESTIMONY OF ELLIOTT BATSON

CAUSE NO. _____ BEFORE THE

INDIANA UTILITY REGULATORY COMMISSION

1 **Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is M. Elliott Batson, and my business address is 858 West Happy Canyon Road,
3 Suite 238, Castle Rock, Colorado 80108.

4 **Q2. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am the Chief Commercial Officer of Hallador Energy Company ("Hallador"). In that
6 capacity, I am responsible for commercial activities of Hallador and its affiliates.

7 **Q3. PLEASE STATE YOUR PROFESSIONAL BACKGROUND.**

8 A. I am a 1985 graduate of the University of South Carolina with a Bachelor of Science in
9 Business Administration. I was employed by Duke Energy Corporation from 1986 until
10 2016 in various fossil fuel procurement functions and leadership roles. Since 2016, I have
11 been employed by Hallador and am responsible for commercial activities such as
12 marketing and sales and new business development.

13 **Q4. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE INDIANA UTILITY**
14 **REGULATORY COMMISSION?**

15 A. Yes I have. I have previously filed testimony before the Indiana Utility Regulatory
16 Commission ("Commission") in various Indiana fuel case proceedings.

17 **Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

18 A. The purpose of my direct testimony is to support Hallador Power Company, LLC's
19 ("Petitioner") request for the Commission to decline jurisdiction over Petitioner's
20 purchase, ownership, and operation of the existing Merom coal-fired electric generating

1 plant ("Facility") located in Sullivan County, Indiana, which is currently owned by Hoosier
2 Energy Rural Electric Cooperative ("Hoosier"). As I explain in more detail, upon
3 acquisition, Petitioner will neither sell electricity to the general public or to any retail
4 customer in Indiana, nor will Petitioner's costs be recovered through retail base rates or
5 other retail rates regulated by the Commission. Rather, Petitioner will sell power solely
6 for resale in the wholesale market subject to the jurisdiction of the Federal Energy
7 Regulatory Commission ("FERC").

8 **Q6. PLEASE DESCRIBE PETITIONER'S CORPORATE STRUCTURE COMPARED**
9 **TO HALLADOR.**

10 A. Petitioner is a limited liability company duly organized and existing under the laws of the
11 State of Delaware. Petitioner's sole member is Hallador, which is a C Corporation existing
12 under the laws of the State of Colorado. Hallador's expertise includes oil and gas
13 exploration, coal development and transportation delivery.

14 **Q7. PLEASE DESCRIBE WHAT PETITIONER IS ACQUIRING FROM HOOSIER AS**
15 **PART OF THIS TRANSACTION.**

16 A. Petitioner is acquiring the Facility located in Sullivan County, Indiana, together with
17 certain other assets, including the Facility, consisting of a coal-fired power plant located in
18 Sullivan County, Indiana, including associated water treatment facilities and certain
19 ancillary equipment, in addition to the following:

- 20 • Upstream structures, facilities, equipment, auxiliary equipment, devices and
21 apparatus that are directly or indirectly required or installed to interconnect with,
22 and deliver electric energy from the Facility to Seller's transmission system at
23 Hoosier's Merom substation 345 kV switchyard bus, including high voltage electric

1 cables, the two (2) 345 kV step-up transformers and the spare 345 kV step-up
2 transformer, switching, electric metering equipment, any other metering
3 equipment, communications equipment, and safety equipment, together with all
4 related rights-of-way and corridor easements related to such facilities, other than
5 certain excluded transmission assets retained by Hoosier (including the Merom
6 substation); and

- 7 • Approximately 800 acres of real property, including an operating coal ash landfill
8 contracts, permits and other intangible assets and liabilities associated with the
9 Facility.

10 **Q8. DO YOU INCLUDE ANY ATTACHMENTS WITH YOUR DIRECT**
11 **TESTIMONY?**

12 A. Yes, I do. I include a copy of the Asset Purchase Agreement between Petitioner and
13 Hoosier as Attachment MEB-1, which is confidential in its entirety at the time of filing my
14 direct testimony.

15 **Q9. PLEASE DESCRIBE THE FACILITY.**

16 A. The existing Facility consists of a two-unit, coal-fired electrical generating facility, with a
17 combined unit nameplate capacity of 1,070 MW. Unit One became operational in 1983
18 and Unit Two became operational in 1982. The Facility is equipped with electrostatic
19 precipitators for fly ash removal, a flue gas desulfurization system, selective catalytic
20 reduction technology, acid aerosol emission reduction technology, and associated rail, coal
21 storage, and ash landfill facilities.

Q10. PLEASE DESCRIBE THE STEPS THAT LED TO PETITIONER'S PROPOSED PURCHASE OF THE FACILITY.

A. In early 2020, Hoosier announced Board approval of its Long Range Resource Plan which plan contemplated the retirement of the Facility in 2023, repurposing of the Facility or sale of the Facility to a third party, if possible. Hallador and Hoosier have been in conversations from time to time directed at the possible acquisition of the Facility by Petitioner. Petitioner is acquiring the Facility in return for assuming decommissioning costs and certain environmental liabilities. The transaction, which includes a three and a half-year power purchase agreement ("PPA") by which Petitioner would sell capacity and energy to Hoosier, is scheduled to close in mid-July 2022 upon obtaining certain governmental approvals. In 2022 and part of 2023, Petitioner is contracted to sell the entire expected offtake of the Facility to Hoosier. In the latter part of 2023 through 2025, Hoosier demand will account for 22% of the energy produced by the plant and 32% of rated capacity.

Q11. WHAT IS THE CURRENT CONDITION OF THE FACILITY?

A. It is our opinion that Hoosier has done an excellent job of maintaining the Facility through the years. Petitioner recently obtained a third party due diligence review of the Facility plant condition and operations. The third party performed a fatal flaw analysis and determined the plant is in good condition. The Facility currently meets or exceeds all local, state and federal standards. The Facility is capable of producing almost 1,000 MWs of energy and capacity at any given time, consuming almost 3.5 million tons of coal annually and generating almost 7.5 million mega-watt hours annually. It also employs more than 100 full-time individual employees. As such, this is a significant sized coal plant in the state of Indiana.

Q12. IS THE FACILITY CURRENTLY IN COMPLIANCE WITH ALL LOCAL, STATE, AND FEDERAL ENVIRONMENTAL REGULATORY AND PERMITTING REQUIREMENTS?

A. Yes, the Facility is currently in compliance with all Local, State and Federal environmental regulatory and permitting requirements. As part of the Facility acquisition, Petitioner is acquiring Merom Station, which is subject to numerous environmental laws, as well as one active coal combustion residuals ("CCR") landfill—the Area 3 Landfill. There are three other inactive landfills that were historically associated with Merom Station (Area 1, Area 2A, and Area 2B Landfills), which Hoosier is retaining and that will not be transferred to Petitioner. Petitioner is not acquiring any CCR surface impoundments, and Merom Station utilizes dry ash handling systems. The owner of the Facility has taken pride in working with regulatory agencies over the years to be good stewards of the environment, as well as good neighbors to the local community. Merom Station has a strong track record of environmental compliance, and Petitioner intends to carry this excellent regulatory record into the future.

Q13. WILL THE FACILITY REQUIRE ANY ADDITIONAL ENVIRONMENTAL PERMITS?

A. No, not presently. Both Petitioner and Hoosier are working with the Indiana Department of Environmental Management regarding the process to transfer the existing environmental permits and make any necessary modifications to existing environmental permits to reflect Petitioner's plans for future operation of Merom Station. Consistent with these discussions, applicable permits necessary for the operation of the Facility will be transferred from Hoosier to Petitioner upon closing. In the event that future changes

necessitate additional permits or permit modifications, Petitioner will collaborate with all pertinent government agencies to ensure continued compliance.

Q14. IS THE FACILITY CURRENTLY CONNECTED TO THE ELECTRIC POWER GRID?

A. Yes, it is. For the next several years, Petitioner foresees no change in how electricity is generated and supplied to the grid. Petitioner will own rights to interconnect the Facility to the grid. Pursuant to the pending Asset Purchase Agreement between Hoosier and Petitioner, Petitioner will have access to the electricity transmission grid through the existing Midcontinent Independent System Operator ("MISO") interconnect at the plant pursuant to the generator interconnection provisions in the MISO Tariff, pending approval by this Commission. Petitioner will offer the output of the Facility to the wholesale markets at negotiated market-based rates.

Q15. DOES THE PETITIONER HAVE THE FINANCIAL ABILITY TO OPERATE THE FACILITY ON AN ONGOING BASIS?

A. Yes. Hallador achieved revenues of approximately \$245 million in 2020. Petitioner will make the necessary funds available to purchase, improve and operate the Facility. Hallador plans on spending more than \$30 million on capital expenditures over the first three years of operations to maintain reliability.

Q16. DOES PETITIONER HAVE THE TECHNICAL CAPABILITY TO OPERATE THE FACILITY?

A. Yes. Hallador has long experience in the coal industry, and Petitioner will utilize the Facility's existing employees as the basis for operating the Facility. Petitioner also plans to enter into Agreements with third-party partners to facilitate management of daily Facility

1 operations and energy marketing. Petitioner will utilize the services of an experienced
2 thermal power plant operator for proper management oversight and an experienced power
3 marketer for energy management functions. These third parties will be selected soon and
4 will work closely with existing Facility employees to properly transition the Facility prior
5 to expected transaction close in July, 2022. Other current contractor relationships will be
6 maintained as necessary.

7 **Q17. WILL PETITIONER MAKE ANY RETAIL SALES OF ELECTRICITY FROM**
8 **THE FACILITY?**

9 A. No. Petitioner is seeking Exempt Wholesale Generator ("EWG") status for the Facility
10 from FERC. Upon authorization, Petitioner will only participate in market-based sales
11 within the wholesale markets as an EWG, and not the retail market. Further, Petitioner will
12 also not be seeking any exclusive service territory in Indiana.

13 **Q18. IS THERE A NEED FOR THE ELECTRICITY GENERATED BY THE**
14 **FACILITY?**

15 A. Yes. The North American Electric Reliability Corporation ("NERC") 2021 Long-Term
16 Reliability Assessment includes the following regarding a potential reserve margin
17 shortfall beginning in 2024 in the MISO area:

18 In the [MISO] area, a reserve margin shortfall previously reported is
19 advancing from 2025 to 2024. MISO could face the retirement and resultant
20 loss of over 13 GW of resource capacity over the 2021–2024 period. At
21 this level of retirements, resource additions must increase beyond current
22 projections to avoid a capacity shortfall in 2024. The retirement of these
23 traditional resources also accelerates the change in resource mix and
24 punctuates the urgency for implementing resource adequacy and energy
25 sufficiency initiatives in the area.¹

¹ NERC 2021 Long-Term Reliability Assessment at 5, available at:
<https://www.nerc.com/pa/RAPA/ra/Pages/default.aspx>.

1 As the grid continues to move more toward renewable or intermittent power resources,
2 reliable capacity that can be called upon at any time, especially when the wind is not
3 blowing and the sun is not shining, is becoming more important to help facilitate this
4 transition. During this transition, the Facility will continue to provide reliable capacity for
5 the MISO area. There is current demand for both capacity and electricity as is evidenced
6 by the PPA signed between Hoosier Energy and Hallador, which is described earlier in my
7 testimony.

8 **Q19. PLEASE DISCUSS FUTURE PLANS FOR OPERATING THE FACILITY AS**
9 **THEY ARE KNOWN TODAY.**

10 A. Petitioner plans to operate the Facility at least through 2025, thereby making the energy
11 and capacity of the Facility available for at least an additional 2.5 years as compared to
12 Hoosier's potential retirement plans. In addition to the PPA entered into with Hoosier, we
13 believe other interested parties will be in the market for both energy and capacity sales
14 from the Facility. Hallador, through its Sunrise Coal subsidiary, has ownership of coal
15 reserves and operates coal mines in Knox and Clay counties. Hallador's control of fuel
16 supply and cost should make the Facility very competitive in the wholesale MISO energy
17 markets for the foreseeable future as an EWG.

18 **Q20. PLEASE DISCUSS HOW PETITIONER'S ACQUISITION OF THE FACILITY**
19 **WILL SUPPORT THE LOCAL COMMUNITY.**

20 A. Petitioner's acquisition of the Facility will provide many economic benefits to the local
21 community. Most importantly, the Facility is a major employer for local residents and tax
22 payer for local communities, which will continue to be supported upon acquisition of the
23 Facility. Petitioner will offer employment to the more than 100 full time employees upon

1 acquisition of the Facility, with the intention of maintaining this level of employment for
2 the local community.

3 **Q21. DO YOU BELIEVE THAT THE ACQUISITION AND FUTURE OPERATION OF**
4 **THE FACILITY BY PETITIONER WILL BE IN THE PUBLIC INTEREST?**

5 A. Yes. We believe MISO supports the need for continued base load generation capacity as
6 other coal plant retirements occur, and the Facility will continue to meet those needs in the
7 wholesale markets. Petitioner will continue to operate the Facility in a manner that is
8 consistent with all local, state, and federal regulatory requirements and will be a significant
9 source of employment for the local community.

10 **Q22. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

11 A. Yes.

VERIFICATION

I hereby verify under the penalties of perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Signature: Julia Batsr

Date: March 7, 2022

LIST OF ATTACHMENTS FOR
VERIFIED DIRECT TESTIMONY OF M. ELLIOTT BATSON

MEB-1 Asset Purchase Agreement (Confidential)

Attachment MEB-1 (Confidential)

[Confidential Attachment – Not Duplicated Herein]